

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE POKÉMON COMPANY
INTERNATIONAL, INC., a Delaware
corporation,

Plaintiff,

v.

BRYAN GARCIA CRUZ, an individual,

Defendant.

No. 19-cv-1911MJP

PLAINTIFF THE POKÉMON COMPANY
INTERNATIONAL, INC.'S MOTION FOR
LEAVE TO FILE SECOND AMENDED
COMPLAINT

NOTE FOR MOTION CALENDAR:
November 20, 2020

Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiff The Pokémon Company International, Inc. ("TPCi") moves the Court for leave to file a second amended complaint to add David Andino Maisonave as a defendant. TPCi recently received information regarding Mr. Andino's participation in leaking images from the unreleased strategy guide for Pokémon Sword and Pokémon Shield. A copy of the proposed Second Amended Complaint is attached to the Declaration of Holly M. Simpkins ("Simpkins Decl.") as Exhibit 1, with the new allegations reflected in redline.

BACKGROUND

Defendant Bryan Garcia Cruz and Mr. Andino leaked more than a dozen images from the unreleased *Pokémon Sword and Shield: The Official Galar Region Strategy Guide* ("Strategy

1 Guide”). The Strategy Guide was created to accompany the release of two highly anticipated
 2 video games, Pokémon Sword and Pokémon Shield. After the leaks, on November 22, 2019,
 3 TPCi sued then-anonymous John/Jane Doe Defendants. Dkt. No. 1. On March 26, 2020, TPCi
 4 amended its complaint to name Mr. Garcia. Dkt. No. 17. The next day, TPCi sent a letter to Mr.
 5 Garcia requesting that he waive service. Mr. Garcia returned the waiver of service on May 18,
 6 2020. Dkt. No. 22.

7 Since then, TPCi has continued its investigation focusing on determining the identities
 8 and roles of others that were involved in the leaks. Simpkins Decl. ¶ 2. As a result of that
 9 continued investigation, TPCi recently received information regarding Mr. Andino’s role in
 10 leaking pictures of the Strategy Guide. *Id.* ¶ 3, Ex. 1 ¶¶ 31–36. TPCi now seeks this Court’s
 11 leave to file a second amended complaint naming Mr. Andino as a defendant and outlining his
 12 participation in the theft and unlawful dissemination of TPCi’s trade secrets.

13 ARGUMENT

14 Federal Rule of Civil Procedure 15(a)(2) provides that district courts “should freely give
 15 leave [to amend] when justice so requires.” This rule reflects a policy that favors amendment of
 16 pleadings. *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 933 (9th Cir. 2007); *Yohanes v.*
 17 *James River Ins. Co.*, No. C20-101 MJP, 2020 WL 4339281, at *2 (W.D. Wash. July 28, 2020).
 18 Rule 15’s implementation of this policy facilitates a decision on the merits rather than on
 19 procedural technicalities. *Eldridge v. Block*, 832 F.2d 1132, 1135 (9th Cir. 1987). Accordingly,
 20 leave to amend should be granted with “extreme liberality.” *DCD Programs, Ltd. v. Leighton*,
 21 833 F.2d 183, 186 (9th Cir. 1987). Rule 15 contemplates that leave should be granted “unless
 22 amendment would cause prejudice to the opposing party, is sought in bad faith, is futile, or
 23 creates undue delay.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir.
 24 1992); *Yohanes*, 2020 WL 4339281, at *2 (granting leave to amend complaint to add new party
 25 after deposition testimony revealed new facts about that party’s involvement). Of these,
 26

1 prejudice is the most critical factor. *United States v. Pend Oreille Pub. Util. Dist. No. 1*, 926
 2 F.2d 1502, 1511 (9th Cir. 1991). Delay alone, without prejudice, is not a proper ground for
 3 denial of leave to amend. *Id.*

4 TPCi should be granted leave to file a second amended complaint because none of the
 5 reasons to deny leave is applicable here. The case is now ready to proceed on the merits given
 6 TPCi's identification of the two key players in the Strategy Guide leaks: Mr. Andino and Mr.
 7 Garcia. *See* Simpkins Decl. ¶ 3, Ex. 1 ¶¶ 31–39. The proposed amendment does not prejudice
 8 Mr. Andino because he will have every opportunity to fully litigate his defense. Discovery has
 9 not yet begun as the parties have not held the Fed. R. Civ. P. 26(f) conference or filed the Joint
 10 Status Report. *See* Dkt. No. 28. And, this amendment is not sought in bad faith or the result of
 11 undue delay. TPCi diligently investigated this matter despite challenges posed by the pandemic.
 12 Dkt. Nos. 5, 11; Simpkins Decl. ¶¶ 2–3. Finally, the proposed amendment is not futile. The
 13 proposed Second Amended Complaint contains allegations regarding Mr. Andino's role as the
 14 individual who took pictures of the then-unreleased Strategy Guide and disseminated them. *See*
 15 Simpkins Decl., Ex. 1 ¶¶ 31–36. Leave to amend will thus permit this case to proceed on the
 16 merits against the responsible parties in a single proceeding, thereby promoting judicial economy
 17 and efficiency.

18 CONCLUSION

19 For the reasons set forth above, the Court should grant TPCi leave to file its Second
 20 Amended Complaint.

1 DATED this 5th day of November, 2020

2 By: s/Holly M. Simpkins
3 Holly M. Simpkins, WSBA No. 33297
4 Lauren W. Staniar, WSBA No. 48741
5 Jacob P. Dini, WSBA No. 54115
6 **Perkins Coie LLP**
7 1201 Third Avenue, Suite 4900
8 Seattle, WA 98101-3099
9 Telephone: 206.359.8000
10 Facsimile: 206.359.9000
11 Email: HSimpkins@perkinscoie.com
12 Email: LStaniar@perkinscoie.com
13 Email: JDini@perkinscoie.com

14 *Attorneys for Plaintiff*
15 *The Pokémon Company International, Inc.*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that they served a copy of the foregoing Motion for Leave to File Second Amended Complaint to the following via U.S. Mail, postage prepaid, before the hour of 5:00 pm, on November 5th, 2020:

Bryan Garcia Cruz
5509 Legacy Crescent Pl., Unit 302
Riverview, FL 33578-2818

s/Vanessa Salinas

Vanessa Salinas
Legal Assistant